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# In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 600

ALCIDES PEREZ, PETITIONER

*v.*

UNITED STATES OF AMERICA

*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT*

## BRIEF FOR THE UNITED STATES

### OPINION BELOW

The opinion of the court of appeals (A. 13a–35a) is reported at 426 F. 2d 1073.

### JURISDICTION

The judgment of the court of appeals (A. 12a) was entered on May 1, 1970. Petitions for rehearing and for rehearing *en banc* were denied on July 1, 1970 (A. 36a, 37a). On July 27, 1970, Mr. Justice Harlan extended the time for filing a petition for a writ of certiorari to and including August 28, 1970. The petition was filed on August 26, 1970, and was granted on November 16, 1970 (A. 38a). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

## QUESTIONS PRESENTED

1. Whether Title II of the Consumer Credit Protection Act of 1968, which proscribes extortionate credit transactions, is a permissible exercise of congressional authority under the Commerce Clause of the Constitution.

2. Whether this legislation is, in any event, valid under the Bankruptcy Clause of the Constitution.

## STATUTES INVOLVED

Title II ("Extortionate Credit Transactions") of the Consumer Credit Protection Act (P.L. 90–321, 82 Stat. 159, 18 U.S.C. (Supp. V) 891, 892, 893, 894, 896) in pertinent part provides as follows:

§ 201. *Findings and purpose*

(a) The Congress makes the following findings:

(1) Organized crime is interstate and international in character. Its activities involve many billions of dollars each year. It is directly responsible for murders, willful injuries to person and property, corruption of officials, and terrorization of countless citizens. A substantial part of the income of organized crime is generated by extortionate credit transactions.

(2) Extortionate credit transactions are characterized by the use, or the express or implicit threat of the use, of violence or other criminal means to cause harm to person, reputation, or property as a means of enforcing repayment. Among the factors which have rendered past efforts at prosecution almost wholly ineffective has been the existence of exclusionary rules of evi-

dence stricter than necessary for the protection of constitutional rights.

(3) Extortionate credit transactions are carried on to a substantial extent in interstate and foreign commerce and through the means and instrumentalities of such commerce. Even where extortionate credit transactions are purely intrastate in character, they nevertheless directly affect interstate and foreign commerce.

(4) Extortionate credit transactions directly impair the effectiveness and frustrate the purposes of the laws enacted by the Congress on the subject of bankruptcies.

(b) On the basis of the findings stated in subsection (a) of this section, the Congress determines that the provisions of chapter 42 of title 18 of the United States Code are necessary and proper for the purpose of carrying into execution the powers of Congress to regulate commerce and to establish uniform and effective laws on the subject of bankruptcy.

§ 202. *Amendments to title 18, United States Code*

(a) Title 18 of the United States Code is amended by inserting the following new chapter immediately after chapter 41 thereof:

"CHAPTER 42—EXTORTIONATE CREDIT TRANSACTIONS

* * * * *

"§ 891. *Definitions and rules of construction*

"For the purposes of this chapter:

* * * * *

"(6) An extortionate extension of credit is any extension of credit with respect to which it is the understanding of the creditor and the debtor at the time it is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person.

"(7) An extortionate means is any means which involves the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person, reputation, or property of any person.

* * * * *

"§ 892. *Making extortionate extensions of credit*

"(a) Whoever makes any extortionate extension of credit, or conspires to do so, shall be fined not more than $10,000 or imprisoned not more than 20 years, or both.

* * * * *

"§ 893. *Financing extortionate extensions of credit*

"Whoever willfully advances money or property, whether as a gift, as a loan, as an investment, pursuant to a partnership or profit-sharing agreement, or otherwise, to any person, with reasonable grounds to believe that it is the intention of that person to use the money or property so advanced directly or indirectly for the purpose of making extortionate extensions of credit, shall be fined not more than $10,000 or an amount not exceeding twice the value of the money or property so advanced,

whichever is greater, or shall be imprisoned not more than 20 years, or both.

"§ 894. *Collection of extensions of credit by extortionate means*

"(a) Whoever knowingly participates in any way, or conspires to do so, in the use of any extortionate means

"(1) to collect or attempt to collect any extension of credit, or

"(2) to punish any person for the nonrepayment thereof, shall be fined not more than $10,000 or imprisoned no more than 20 years, or both.

* * * * *

"§ 896. *Effect on State laws*

"This chapter does not preempt any field of law with respect to which State legislation would be permissible in the absence of this chapter. No law of any State which would be valid in the absence of this chapter may be held invalid or inapplicable by virtue of the existence of this chapter, and no officer, agency, or instrumentality of any State may be deprived by virtue of this chapter of any jurisdiction over any offense over which it would have jurisdiction in the absence of this chapter."

STATEMENT

Petitioner was convicted, after a jury trial in the United States District Court for the Eastern District of New York, on five counts of unlawfully using extortionate means in collecting and attempting to collect an extension of credit, in violation of 18

U.S.C. 894(a)(1), and was sentenced to concurrent terms of eighteen months' imprisonment. The court of appeals affirmed (A. 13a–31a), one judge dissenting (A. 32a–35a).

1. At trial, the government's principal witness was the victim of petitioner's extortion scheme, Alexis Miranda, a man twenty-six years of age, married and with three children, who had worked as a butcher since the age of sixteen. Miranda testified that, in early January 1968, he opened his own butcher shop in Brooklyn, New York, after reaching an understanding with some meat suppliers as to credit (Tr. 47–51, 133–134, 142–147). Finding himself in need of cash, he tried unsuccessfully to obtain a loan from the Chase Manhattan Bank; he also learned from the Small Business Administration that any SBA loan would take at least eight weeks to process. Miranda then sought assistance from an acquaintance,[1] who, he said, sent him to a restaurant in Brooklyn on January 23, 1968, to meet a man named "Sabu," identified at trial as petitioner (Tr. 51–55, 147–150).

At the restaurant, Miranda, accompanied by his employee Santana, met with petitioner and explained that he owned his own butcher shop and wanted to borrow some money; he asked for $1,000. After making a telephone call, petitioner agreed to the loan and left for the money. He returned about fifteen minutes

[1] The government tendered the name of Miranda's acquaintance (Herbie Valez) to the defense, and informed defense counsel that Valez's testimony before the grand jury in certain respects conflicted with the trial testimony of Miranda. Defense counsel declined to call Valez as a witness (Tr. 303–305).

later and handed Miranda $1,000, stating that Miranda would have to repay the amount in installments of $105 per week for fourteen weeks, with the money to be picked up by petitioner at the butcher shop every Tuesday (Tr. 56–61, 63–64, 151–155).

Miranda paid petitioner $105 weekly for six to eight weeks, and was then informed that he would have to pay $25 extra, or $130, for each of the remaining weeks; petitioner gave as a reason that he had to get the interest faster. Miranda thereafter paid $130 for some weeks (Tr. 66–68, 155).

In March 1968, when petitioner came to the butcher shop to collect the weekly payment, Miranda asked to borrow an additional $2,000 to build up the business by stocking certain groceries and to put up shelves in the shop (Tr. 167, 169–170). This loan was arranged after Miranda agreed to make weekly installment payments on both the $1,000 and the $2,000 loans of $205; petitioner then left and returned about an hour later with $2,000, remarking that Miranda now owed him $3,000 (Tr. 68–71, 85–87, 168).

Three or four weeks later, petitioner informed Miranda that he had "too much money in the street," that the money belonged to his boss, and that he had to collect it. Miranda was told to pay $330 a week; when he objected, petitioner related a story about a man who refused to pay and ran away to Massachusetts, saying that he had sent that man to the hospital. Miranda then began paying $330 per week and continued to do so through the month of June 1968 (Tr. 74–77, 88–93).

In early July, Miranda testified, he closed his shop early on the day of a scheduled payment so as to avoid petitioner, but petitioner came to his home and, shouting obscenities, demanded $500 on the following Monday (Tr. 94–98). Miranda was able to meet this $500 payment; the following Saturday, he gave petitioner another $500. On this latter occasion, petitioner stated that it looked like Miranda was going to run away. After Miranda denied any such intent, petitioner advised him that he would be at the store the next Saturday to collect a payment of $1,000. Miranda was able to make this payment by not paying anything to his suppliers that week (Tr. 104–107).

Faced with another $1,000 payment on the next Saturday, Miranda closed his butcher shop, sold all his stock and fixtures for $300, sent his wife to live with her sister in the Bronx, and, later in the week, himself went to Puerto Rico for about two weeks. Prior to leaving, however, he visited the District Attorney's office and, while there, spoke to F.B.I. agent Roselli about his dealings with petitioner (Tr. 108–113, 197, 386–398).

2. On his return from Puerto Rico, Miranda went to work in Conte's Meat Market in Brooklyn. In early September, petitioner came to Miranda's home and, while remaining outside, conversed with Miranda's wife. Miranda, who was inside, overheard petitioner say, "I know he's there, you are lying. I know he's in there because I got a few friends of mine that are watching the place." Petitioner told Miranda's wife to tell her husband he wanted to see him as soon as possible "or else." When she asked

what "or else" meant, petitioner responded that if she wanted, he could "send a couple of friends of [his] up here." Mrs. Miranda replied that if petitioner was threatening her, she could call the F.B.I.; petitioner thereupon left (Tr. 114–116).

Miranda did not go to see petitioner and returned to work the next day. However, in mid-September, petitioner came to Conte's Meat Market and spoke to Miranda. He told Miranda that he was a lucky guy; that he had run away and petitioner could have him "castrated" (Tr. 119–120); and that he should bring $100 to a luncheonette that evening. Miranda telephoned the F.B.I. That evening he went to the luncheonette, but without the money. Petitioner then told Miranda that he could afford $100 per week; that he still owed him $6,400 or $6,700; that it did not matter how he obtained the money so long as he made the weekly $100 payments; and that petitioner was being "nice" to Miranda—that the people to whom petitioner would shortly be turning over his collections would not be so nice, and, if Miranda failed to pay, they would put him in the hospital. Miranda offered to pay $25 per week, but petitioner would not agree. When Miranda mentioned that he had sold the butcher shop, petitioner stated that he should have been consulted so that his people could have arranged an auction sale permitting the store to be purchased in someone else's name; Miranda could then have continued to work there while paying back the loan. Petitioner then told Miranda he wanted $100 the next day (Tr. 118–124).

The following day, petitioner again tried to collect the $100, but Miranda did not have the money. After petitioner left, Miranda called the F.B.I. and informed them what had happened (Tr. 124–126). A few days later, on October 2, 1968, petitioner and Miranda met again. Miranda said the best he could do was to pay petitioner $25 per week; petitioner said that that was no money. Miranda then responded: "Already I paid you * * * the triple of the loan." Petitioner told Miranda that he should steal or sell drugs if necessary to get the money to pay him; that even if he was caught and put in jail, it was better to be in jail than in the hospital with a broken back or legs. He added: "I could have you sent to the hospital, you and your family, any moment I want with my people" (Tr. 126–131).

Following this conversation, Miranda again spoke with F.B.I. agent Roselli, and that same day petitioner was arrested (Tr. 401–402). His conviction followed[2] and the court of appeals affirmed, denying a petition for rehearing with suggestion for rehearing *en banc*.

## SUMMARY OF ARGUMENT

### I

The Commerce Clause of the Constitution (Art. I, § 8, cl. 3), together with the Necessary and Proper Clause (Art. I, § 8, cl. 18), gives to Congress the power to regulate both interstate commerce and intrastate

[2] Miranda's testimony at trial was corroborated by his employee, Santana, who accompanied Miranda on his initial meeting with petitioner (Tr. 267–273, 275–279), and by Miranda's wife (Tr. 206–211, 232–237). Petitioner did not call any witnesses, nor did he testify on his own behalf.

activity which "* * * exerts a substantial economic effect on interstate commerce * * *." *Wickard* v. *Filburn*, 317 U.S. 111, 117. In recent years, this Court has construed this regulatory power liberally, expanding it to meet the needs of our increasingly complex society. Thus, it has upheld the constitutionality of statutes regulating the amount of grain that may be raised by farmers for self-consumption, requiring nondiscriminatory service by motels and restaurants (whether or not the particular public accommodation caters to interstate clientele), and regulating wages and hours of all employees of enterprises which buy or sell in interstate commerce (even though an individual employee may not himself be engaged in such commerce or production for such commerce). Moreover, where the proscribed class of conduct, as a whole, has been found by Congress to have a substantial adverse effect on interstate commerce, the Constitution has consistently been held not to require, as a condition to the statute's validity, that there be provision for an independent judicial determination whether commerce has been specifically affected in a particular instance.

Congress has expressly found that extortionate credit transactions, as a class of activity, have substantial adverse economic effect on interstate commerce. The only questions for consideration by this Court are whether that finding has a "rational basis" on "any state of facts known or which could reasonably be assumed by Congress" (*United States* v. *Carolene Products Co.*, 304 U.S. 144, 154) and, if so, whether the means Congress selected to eliminate the evil are

reasonable and appropriate. *Maryland* v. *Wirtz*, 392 U.S. 183, 189–190.

The evidence which served as a basis for the legislative determination to enact Title II of the Consumer Credit Protection Act showed conclusively that the loan shark racket is largely controlled by organized crime; that a substantial part of the funds used by the underworld to finance its activities is derived from extortionate credit transactions; and that these activities are one of the methods by which the underworld obtains control of legitimate businesses. If, as this Court has held, the racial unrest underlying *Katzenbach* v. *McClung*, 379 U.S. 294, and the potential industrial strife underlying *Maryland* v. *Wirtz*, 392 U.S. 183, threatened sufficient economic disruption to interstate commerce to sustain federal regulation of an entire class of activities, certainly organized crime which is "interstate and international in character," which is engaged in activities that "involve many billions of dollars each year," and which is "directly responsible for murders, willful injury to person and property, corruption of officials, and terrorization of countless citizens" (P.L. 90–321, 82 Stat. 159), causes no less a disruptive effect. And loan sharking in itself is harmful to interstate commerce, by diminishing the purchasing capacity of its victims and rendering them, through fear and resultant tension, less productive members of society.

Nor can it reasonably be maintained that the "means" chosen by Congress to combat the evil are unreasonable or inappropriate. The degree to which the loan shark racket is controlled by the organized crime, and the

uses to which the underworld puts both the profits and the leverage that it reaps therefrom, plainly establish the existence of a serious deleterious effect on interstate commerce which it is necessary and appropriate for Congress to regulate. Since effective regulation of the evil can be achieved only by subjecting all extortionate credit transactions to federal proscription, the framing of legislation so as to reach the entire class is fully warranted.

## II

The instant legislation also can be sustained on the basis of Congress' power under the Constitution to establish "uniform laws on the subject of Bankruptcies throughout the United States" (Art. I, § 8, cl. 4). Loan shark transactions, by their very nature, "directly impair the effectiveness and frustrate the purposes" of the bankruptcy laws. Plainly, adherence by creditors to the prescribed procedures under law for collection of the debts is an indispensable prerequisite to the effective functioning of any legal scheme aimed at the ordering of the affairs of insolvent persons. When there are creditors who refuse to follow these legal precepts, the meaningful implementation of the bankruptcy laws by all entitled to enjoy their benefits requires that the force of criminal sanctions be brought to bear against such creditors. On this basis, the instant legislation is "necessary and proper for carrying into execution" (see Art. I, § 8, cl. 18) the bankruptcy power with which Congress is invested, and is "plainly adapted" to that end. *McCulloch* v. *Maryland*, 4 Wheat. 316, 409–420.

## ARGUMENT

### I. CONGRESS IS AUTHORIZED UNDER THE COMMERCE CLAUSE TO PROSCRIBE GENERALLY THE USE OF EXTORTIONATE MEANS TO COLLECT EXTENSIONS OF CREDIT

Petitioner's case here rests entirely on his challenge to the authority of Congress under the Commerce Clause of the Constitution to enact legislation proscribing all "loan sharking" activities, including isolated transactions which are of a purely local character. It is uncontested that petitioner used extortionate means to collect and attempt to collect an extension of credit, in violation of the terms of 18 U.S.C. 894(a), and that the activities for which he now stands convicted are a proper subject for criminal prosecution. His sole contention is that he should have been prosecuted by the state and not by the federal government.[8]

A. *Congress can enact legislation reaching the activity of "loan sharking" under its broad commerce powers.*

There are three distinct categories of conduct subject to federal control under the broad constitutional power given to Congress "[t]o regulate commerce * * * among the several States" (Art. I, § 8, cl. 3). Federal criminal legislation most commonly prohibits activity involving direct misuse of the channels of interstate commerce. Thus, Congress has properly legislated against the transportation across state or

[8] In the court of appeals, petitioner had argued that the evidence at trial was not sufficient to sustain conviction. However, that issue was decided against him below (A. 31a) and no effort has been made to present that issue here.

national boundaries of stolen property (18 U.S.C. 2312), of persons who have been kidnapped (18 U.S.C. 1201), and of persons or things being transported for unlawful or immoral purposes (18 U.S.C. 1952, 2421). In such cases, federal intervention has been deemed necessary to prohibit the use of interstate transportation to effect the evil intended. See, *e.g.*, *Kentucky Whip & Collar Co.* v. *Illinois Central Railroad Co.* 299 U.S. 334, 348–350; *Hoke* v. *United States,* 227 U.S. 308, 322–323; *Champion* v. *Ames,* 188 U.S. 321, 363–364. *Rewis* v. *United States,* No. 5342, this Term, argued January 19, 1971, involves a question of the requisite factual relationship between a particular defendant and such use of interstate channels.

Similarly, it has long been recognized that Congress is authorized to punish conduct which is directed against the instrumentalities of, or persons or things involved in, interstate commerce. A legitimate exercise of its power in this area is reflected in federal legislation reaching such activities as theft from an interstate shipment (18 U.S.C. 659) or destruction of an aircraft or train travelling across state lines (18 U.S.C. 32, 1992). See, *e.g.*, *United States* v. *Gollin,* 176 F. 2d 889, 893 (C.A. 3), certiorari denied *sub nom. Richman* v. *United States,* 338 U.S. 848; *Friedman* v. *United States,* 233 Fed. 429, 430 (C.A. 1), certiorari denied, 244 U.S. 657.

Congress also has the power under the Commerce Clause, as augmented by the Necessary and Proper Clause (Art. I, § 8, cl. 18), to regulate any intrastate activity which "* * * exerts a substantial economic effect on interstate commerce * * *."

*Wickard* v. *Filburn*, 317 U.S. 111, 125. Cf. *The Shreveport Case*, 234 U.S. 342. It is conduct in this third category which is the subject of the instant legislation.

1. The perimeters of federal authority to control conduct affecting interstate or foreign commerce, which Congress invoked in enacting Title II of the Consumer Credit Protection Act, were first suggested by Chief Justice Marshall over a century ago in *Gibbons* v. *Ogden*, 9 Wheat. 1. Speaking for the Court (9 Wheat. at 195), he there stated:

> The genius and character of the whole government seem to be, that its action is to be applied to all those external concerns of the nation and *to those internal concerns which affect the States generally* * * * [emphasis supplied].

In marking the limits of federal action, he excluded only those local activities "which are completely within a particular State, which do not affect other States, and with which it is not necesary to interfere, for the purpose of executing some of the general powers of the government" (*ibid.*).

Although some subsequent decisions departed from this original principle,[4] the more restrictive view

[4] The chief departures were *United States* v. *E. C. Knight Co.*, 156 U.S. 1 (rejected in *Standard Oil Co.* v. *United States*, 221 U.S. 1, 68–69, and *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1, 38–39); *Adair* v. *United States*, 208 U.S. 161 (substantially overruled in *Texas & New Orleans Railroad Company* v. *Brotherhood of Railway & Steamship Clerks*, 281 U.S. 548; *Virginian Railway Co.* v. *System Federation No. 40*, 300 U.S. 515); *Railroad Retirement Board* v. *Alton R. Co.*, 295 U.S. 330 (disapproved in *United States* v. *Lowden*, 308 U.S. 225, 239); *First Employers' Liabil-*

enunciated in the earlier post-*Gibbons* cases was, as pointed out in *Wickard* v. *Filburn*, 317 U.S. 111, 121–122, largely the result of historical accident and ultimately gave way to Chief Justice Marshall's broad interpretation of the commerce power.[5] Thus, in *United States* v. *Wrightwood Dairy Co.*, 315 U.S. 110, 119, Chief Justice Stone held for a unanimous court that "[t]he commerce power is not confined in its exercise to the regulation of commerce among the states," but, in addition, "extends to those activities intrastate which so affect interstate commerce, or the

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*ity Cases*, 207 U.S. 463 (disapproved in *Virginian Railway Co.* v. *System Federation No. 40*, 300 U.S. 515, 557); *Carter* v. *Carter Coal Co.*, 298 U.S. 238 (disapproved in *United States* v. *Darby*, 312 U.S. 100, and overruled in *Wickard* v. *Filburn*, 317 U.S. 111, 122, n. 21); *Hammer* v. *Dagenhart*, 247 U.S. 251 (overruled in *United States* v. *Darby*, 312 U.S. 100, 117).

[5] Because Congress made no substantial assertion of its commerce power until enactment of the Interstate Commerce Act in 1887, decisions of the Court immediately succeeding *Gibbons* dealt "almost entirely with the permissibility of state activity which it was claimed discriminated against or burdened interstate commerce" and, as a result, "[i]n discussion and decision the point of reference, instead of being what was 'necessary and proper' to the exercise by Congress of its granted power, was often some concept of sovereignty thought to be implicit in the status of statehood." *Wickard* v. *Filburn*, 317 U.S. at 121. When legislation began to be enacted "which required the Court to approach the interpretation of the Commerce Clause in the light of an actual exercise by Congress of its power thereunder," the Court at first "adhered to its earlier pronouncements, and allowed but little scope to the power of Congress." *Id.* at 121–122. Soon, however, the Court began to render other decisions which "called forth broader interpretations of the Commerce Clause destined to supersede the earlier ones, and to bring about a return to the principles first enunciated by Chief Justice Marshall." *Id.* at 122. The trend instituted by these latter cases has never been reversed.

exertion of the power of Congress over it, as to make regulation of them appropriate means to the attainment of a legitimate end, the effective execution of the granted power to regulate interstate commerce." And Mr. Justice Jackson, also speaking for a unanimous court, restated the principle in *Wickard* v. *Filburn*, 317 U.S. 111, 125, in words applicable to the present situation:

> * * * even if appellee's activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce, and this irrespective of whether such effect is what might at some earlier time have been defined as "direct" or "indirect."

See also *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1, 37; *United States* v. *Darby*, 312 U.S. 100; *National Labor Relations Board* v. *Reliance Fuel Corp.*, 371 U.S. 224, 226–227.

Consequently, the groundwork had been well laid for the decision by this Court in *Katzenbach* v. *McClung*, 379 U.S. 294. There, owners of a local restaurant, which received a portion of its food from out of state, sought to enjoin the enforcement of Title II of the Civil Rights Act of 1964 (42 U.S.C. 2000a) on the ground that Congress was without power under the Commerce Clause to enact a blanket prohibition against racial discrimination in public eating places without requiring case-by-case proof that discrimination in a particular restaurant affects interstate commerce. The *McClung* decision is instructive

for two reasons. First, the Court, in finding the necessary federal connection, was not content with a determination that a portion of the restaurant's food came from across state lines. It looked, instead, to the more meaningful economic impact on commerce generally among the several states of acts of racial discrimination confined within a particular state: to the inhibiting effect upon spending by Negroes, which in turn reduces the demand for interstate goods; to "wide unrest," which has "a depressant effect on general business conditions" in the communities where it occurs, and which causes "industry to be reluctant to establish" in such communities. 379 U.S. at 299–300. Second, the Court laid to rest any lingering notion that the failure of Congress to provide that "the Federal underpinning be proven in each prosecution" (Br. 6) renders the statute in question constitutionally vulnerable. Thus it stated (379 U.S. at 303):

> * * * Congress' action in framing this Act was not unprecedented. In *United States* v. *Darby*, 312 U.S. 100 (1941), this Court held constitutional the Fair Labor Standards Act of 1938. [Footnote omitted.] There Congress determined that the payment of substandard wages to employees engaged in the production of goods for commerce, while not itself commerce, so inhibited it as to be subject to federal regulation. The appellees in that case argued, as do the appellees here, that the Act was invalid because it included no provision for an independent inquiry regarding the effect on commerce of substandard wages in a particular business. [Citations omitted.] But the Court rejected the argument, observing that:

> "[S]ometimes Congress itself has said that a particular activity affects the commerce, as it did in the present Act, the Safety Appliance Act and the Railway Labor Act. In passing on the validity of legislation of the class last mentioned the only function of courts is to determine whether the particular activity regulated or prohibited is within the reach of the federal power." At 120–121.

The *McClung* rationale was recently reaffirmed by this Court in *Maryland* v. *Wirtz*, 392 U.S. 183, in both of the above particulars. There, the constitutional challenge focused on an amendment broadening the coverage of the Fair Labor Standards Act to include all employees of an enterprise engaged in commerce or production for commerce, rather than only those employees who themselves were directly engaged in commerce or production for commerce. Again, because labor costs in any department affect the competitive position of a company doing interstate business ("competition" theory) and because substandard labor conditions in enterprises which purchase out-of-state goods tend to cause industrial strife which disrupts the interstate flow of goods ("labor dispute" theory), the Court found ample basis for federal intervention in the economic impact on interstate commerce, 392 U.S. at 190–192. Moreover, it went on to hold (392 U.S. at 192–193):

> Whether the "enterprise concept" is defended on the "competition" theory or on the "labor dispute" theory, it is true that labor

> conditions in businesses having only a few employees engaged in commerce or production may not affect commerce very much or very often. Appellants therefore contend that defining covered enterprises in terms of their employees is sometimes to permit "the tail to wag the dog." However, while Congress has in some instances left to the courts or to administrative agencies the task of determining whether commerce is affected in a particular instance, *Darby* itself recognized the power of Congress instead to declare that an entire class of activities affects commerce. [Footnote omitted.] The only question for the courts is then whether the class is "within the reach of the federal power." [Footnote omitted.] The contention that in Commerce Clause cases the courts have power to excise, as trivial, individual instances falling within a rationally defined class of activities has been put entirely to rest. [Citations omitted.]

2. These same two considerations are equally dispositive of the instant litigation. Plainly, the increasing interdependence of all parts of the economy and changes in commercial practices have, in fact, closely linked to interstate commerce many activities which were more isolated in earlier years. Today, virtually every activity, however local, which has a recognized economic effect exerts that effect in some way upon interstate as well as local commerce and, hence, is susceptible of federal control. As Mr. Justice Douglas, dissenting on another issue in *Maryland* v. *Wirtz,* 392 U.S. at 204, recognized: "Commercial activity of every stripe may in some way interfere 'with the [interstate] flow of merchandise' or interstate travel" and

therefore "may be regulated and controlled by Congress."* As pointed out in *North American Company* v. *Securities & Exchange Commission,* 327 U.S. 686, 705:

> This broad commerce clause does not operate so as to render the nation powerless to defend itself against economic forces that Congress decrees inimical or destructive of the national economy. Rather it is an affirmative power commensurate with the national needs. It is unrestricted by contrary state laws or private contracts. And in using this great power, Congress is not bound by technical legal conceptions. Commerce itself is an intensely practical matter. *Swift & Co.* v. *United States,* 196 U.S. 375, 398. To deal with it effectively, Congress must be able to act in terms of economic and financial realities. The commerce clause gives it authority so to act.

And see *American Power Co.* v. *Securities & Exchange Commission,* 329 U.S. 90, 103–104.

If racial unrest in *McClung,* and industrial strife in *Maryland,* threatened sufficient economic disruption to interstate commerce to sustain federal regulation of an entire class of activities, *a fortiori* organized crime which is "interstate and international in character," which is engaged in activities that "in-

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*Mr. Justice Douglas (joined by Mr. Justice Stewart), went on to state that in most situations such regulation is "entirely proper" (392 U.S. at 204), urging only that the line be drawn at applying federal regulations to employment conditions in state-owned enterprises, since in such cases "the regulated 'businesses' are * * * essential functions being carried on by the States" (*ibid.*).

volve many billions of dollars each year," and which is "directly responsible for murders, willful injuries to person and property, corruption of officials, and terrorization of countless citizens" (P.L. 90–321, 82 Stat. 146, 159, Sec. 201(a)(1)), has at least an equivalent disruptive effect on commerce;[7] legislation aimed at an entire class of transactions which generates a substantial part of the funds used to finance its insiduous activities is thus proper.[8] Certainly, loan sharking practices have no less adverse effect on interstate commerce, by diminishing the purchasing capacity of their victims and rendering them, through fear and resultant tension, less productive members of society, than the practice in *Filburn* of raising grain for self-con-

[7] Judge Hays, dissenting below (A. 35a), sought to distinguish *McClung* and *Maryland* on the ground that they did not involve an attempt by Congress "to regulate intrastate crime." However, as noted earlier, these cases did involve Congressional regulation of intrastate conduct. And it is quite clear from the many cases upholding federal criminal statutes enacted under the commerce power that the constitutional validity of federal regulation of conduct does not turn on whether the enforcement is by criminal or civil sanctions. See, *e.g.*, *United States* v. *Sullivan*, 332 U.S. 689, 697–698. To the contrary, this Court has specifically held that Congress, in exercising its commerce power, may adopt measures which "have the quality of police regulations" (*Hoke* v. *United States*, 227 U.S. 308, 323), and that it may exercise "the police power, for the benefit of the public, within the field of interstate commerce" (*Brooks* v. *United States*, 267 U.S. 432, 436–437). See also *Champion* v. *Ames*, 188 U.S. 321, 354–363.

[8] The statement by the House Managers, at the time P.L. 90–321 was reported out of the conference committee, reflects that the bill "is aimed directly at the activities of organized crime" (H. Conf. Rep. No. 1397, 90th Cong., 2d Sess., p. 28) and constitutes "a deliberate legislative attack on the economic foundations of organized crime" (*id.* at 31).

sumption (thereby diminishing the demand for grain sold interstate) and the practice in *McClung* of racial discrimination (thereby diminishing purchases by Negroes of interstate goods and possibly discouraging industrial relocation). The constitutionality of the instant legislation has thus been upheld by every court of appeals called upon to consider the question. *United States* v. *Biancofiori*, 422 F. 2d 584 (C.A. 7), certiorari denied, 398 U.S. 942; *United States* v. *Fiore*, 434 F. 2d 966 (C.A. 1), petition for certiorari pending, No. 1259, this Term. See also *United States* v. *DeStafano*, 429 F. 2d 344 (C.A. 2), petition for certiorari pending, No. 715, this Term; *United States* v. *Calegro DeLutro*, C.A. 2, No. 34987, decided December 11, 1970, petition for certiorari pending, No. 1234, this Term.

As already pointed out (*supra*, pp. 19–21), the fact that "the statute does not require the government to prove, as an element of the crime, that either the threat of violence or the credit extension at issue had any effect whatsoever upon or any relation to interstate commerce" (A. 33a) cannot be considered a constitutional infirmity. While it is true, as the court below noted (A. 18a), "that almost all federal criminal statutes are so drafted that the connection with federal interests—the federal jurisdictional peg—must be proved in each case because such connection is incorporated into the definition of the offense," the court was equally correct in observing that "this hardly resolves the question whether such a mode of drafting is *constitutionally* required" (A. 18a; emphasis in original). Here, as we shall show (*infra*,

pp. 28–32), Congress obviated case-by-case determination by finding that loan sharking as a practice exerts a deleterious effect upon commerce. Unquestionably, such an approach is constitutionally permissible. *Maryland* v. *Wirtz*, 392 U.S. 183, 192–193; *Katzenbach* v. *McClung*, 379 U.S. 294, 301–303; *Wickard* v. *Filburn*, 317 U.S. 111, 127–128; *United States* v. *Sullivan*, 332 U.S. 689, 697–698; *United States* v. *Darby*, 312 U.S. 100, 120–124.[9]

We point out that only recently Congress adopted the identical technique utilized in the present law of not requiring a showing of an effect on commerce in individual cases in enacting the Drug Abuse Control Amendments of 1965,[10] making it a crime to manufacture, process, sell or possess any depressant or stimulant drug.[11] The federal courts of appeals which

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[9] In fact, the effect of the loan sharking practices in this case was to cause Miranda to close his business (which no doubt sold merchandise that came from other states) and to curtail seriously his purchasing power as a consumer of interstate merchandise. See also pp. 30–31, n. 14, *infra*.

[10] P.L. 89–74, 79 Stat. 226, July 15, 1965, 21 U.S.C. (Supp. V) 331(q), 360a. The same approach has also been taken in two more recent statutes: The Organized Crime Control Act of 1970, P.L. 91–452, 84 Stat. 922, October 15, 1970, Titles VIII (see 18 U.S.C. 1511, 1955, IX (see 18 U.S.C. 1961–1968), XI (see 18 U.S.C. 841–848); The Comprehensive Drug Abuse Prevention and Control Act of 1970, P.L. 91–513, 84 Stat. 1236, October 27, 1970 (see 21 U.S.C. 841–851, 881–882). And cf. *United States* v. *Synnes*, C.A. 8, No. 20,238, decided February 1, 1971 (Sec. 1202(a)(1) of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. 90–351, 82 Stat. 197).

[11] Admittedly, the reason invoked by Congress for doing so in this legislation—that as a practical matter it is very difficult or impossible to determine whether such drugs have moved

have considered the constitutionality of these provisions have uniformly sustained them against the claim, similar to that advanced by petitioner here, that they are beyond the power of Congress under the Commerce Clause. *White* v. *United States,* 395 F. 2d 5 (C.A. 1), certiorari denied, 393 U.S. 928; *White* v. *United States,* 399 F. 2d 813 (C.A. 8); *Deyo* v. *United States,* 396 F. 2d 595 (C.A. 9); *Whalen* v. *United States,* 398 F. 2d 286 (C.A.D.C.); *United States* v. *Cerrito,* 413 F. 2d 1270 (C.A. 7), certiorari denied, 396 U.S. 1004. And there, as here, Congress supported its use of this approach with appropriate formal findings. 79 Stat. 226–227. It is, then, to these formal findings that we now must turn.

B. *Congress had a "rational basis" for finding that loan sharking activities have a substantial economic effect on interstate commerce.*

In *Katzenbach* v. *McClung,* 379 U.S. 294, 303–304, this Court stated:

> * * * Of course, the mere fact that Congress has said when particular activity shall be deemed to affect commerce does not preclude further examination by this Court. But where we find that the legislators, in light of the facts and testimony before them, have a rational basis for finding a chosen regulatory scheme necessary to the protection of commerce, our investigation is at an end. * * *

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or been produced in interstate commerce—is different from the kinds of considerations which support the present statute (see *infra,* pp. 28–32). Our point here is only that there clearly is nothing inherently unconstitutional in the statutory technique which Congress in the instant case has chosen to use.

Similarly, here, the judicial function in assessing the constitutionality of the present statute under the Commerce Clause is only to determine whether Congress' conclusion—that extortionate credit transactions have a significant adverse effect on interstate commerce—has a reasonable factual basis. Thus, as in *Heart of Atlanta Motel, Inc.* v. *United States,* 379 U.S. 241, the only questions here are "(1) whether Congress had a rational basis for finding that [the proscribed activity] affected commerce, and (2) if it had such a basis, whether the means it selected to eliminate that evil are reasonable and appropriate." *Id.* at 258.

In light of *Filburn, McClung* and *Maryland,* it may well be that the inferences to be drawn from common experience are alone sufficient to furnish Congress with the requisite "rational basis" for the instant legislation. Surely, the observation of Mr. Justice Black in his separate opinion in *McClung* and *Atlanta Motel*—that despite the large body of evidence before Congress to justify its belief that racial discrimination has a "stifling and distorting effect" upon the sale of interstate goods, "this belief would not be irrational even had there not been" such evidence available (379 U.S. at 274)—applies with equal force to loan sharking activities of organized crime. It is not necessary, however, to rest the constitutional argument here on such inferences; Congress, when considering this legislation, had before it abundant specific information to justify enactment.

1. The Consumer Credit Protection Act, as it originally emerged from committee in both the House (H.R. 11601, 90th Cong., 1st Sess.) and the Senate (S. 5, 90th Cong., 1st Sess.) did not include what is now Title II of the Act (Extortionate Credit Transactions). Separate amendments to add provisions aimed at loan sharking activities were later proposed by Representatives Poff (Virginia) and McDade (Pennsylvania). 114 Cong. Rec. 1605–1606, 1609–1610. The two proposals differed in that the McDade amendment provided a blanket prohibition against extortionate credit transactions whereas the Poff amendment reached such transactions only if they could be shown either to affect commerce or involve the use of a facility of commerce. The Poff version was adopted in the House (114 Cong. Rec. 1610), but on the understanding that both proposals would be considered and a choice made between them during the Senate-House conference on the bill as a whole. As the bill emerged from conference, and was finally enacted, it essentially took the form of the McDade amendment. Title II of the Consumer Credit Protection Act, P.L. 90–321, 82 Stat. 159.

As Representative McDade emphasized on the floor of the House (114 Cong. Rec. 14391), the anti-loan-sharking bill that was ultimately adopted grew out of "profound study of organized crime, its ramifications and its implications," undertaken by some twenty-two congressmen in 1966–1967. The results of that study were embodied in a report entitled "The Urban Poor and Organized Crime," submitted to the House on August 29, 1967 (113 Cong. Rec. 24460–24464), which revealed that "organized crime takes over $350 mil-

lion a year from America's poor through loan-sharking alone." Indeed, as revealed in the report of the President's Commission on Law Enforcement and Administration of Justice,[11] on which the McDade study placed principal reliance, this activity "is the second largest source of revenue for organized crime" (p. 189), and is one of the methods by which the underworld obtains control of legitimate businesses (p. 190).

Perhaps the most graphic account of loan sharking practices that was undoubtedly considered by Congress, however, was the 1965 public report by the New York Commission of Investigations, prepared on the basis of extensive hearings on the subject.[12] That

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[11] *The Challenge of Crime in a Free Society*, A Report by the President's Commission on Law Enforcement and Administration of Justice (February 1967).

[12] *An Investigation of the Loan Shark Racket*, A Report by the New York State Commission of Investigation (April 1965). The background papers for the 1967 report of the President's Commission, which served as a major source for the McDade study, indicate that the New York State Commission's report was used extensively in preparing the later report. See *Task Force Report: Organized Crime* (1967), at 3, nn. 30, 33, 34, 38; *Task Force Report: Crime and Its Impact—An Assessment*, at 53, n. 117. Moreover, Representative Patman, leader of the House conferees who were instrumental in drafting the final version of the present statute (114 Cong. Rec. 14388), read into the record on January 30, 1968 (114 Cong. Rec. 1428–1431) a feature article on loan shark activities that had appeared in a recent *New York Times Magazine* and a separate news article on the same subject that had appeared in the *Times*. The feature article conveyed, in a more dramatic form, much of the information contained in the New York State Commission's report and drew upon that report as one of its sources. The other article related that, despite enactment of a state usury law as a result of the state commission's investigation, the menace of loan sharking had become even more serious. It is thus inconceivable that the

report reflects unequivocally that the loan shark racket is controlled by organized criminal syndicates, either directly or in partnership with independent operators to whom they furnish "prestige and brawn" (p. 12); that in most instances the racket is organized into three echelons, with the top underworld "bosses" providing the money to their principal "lieutenants", who in turn distribute the money to the "operators" who make the actual individual loans (pp. 10–11); that loan sharks serve as a source of funds to bookmakers, narcotics dealers, and other racketeers (pp. 13–16); that victims of the racket include all classes, from businessmen to laborers (pp. 33, 38–41, 77–79); that the victims are often coerced into the commission of criminal acts in order to repay their loans (pp. 41–45, 50–56); and that through loan sharking the organized underworld has obtained control of legitimate businesses (pp. 15, 19–31), including securities brokerages (pp. 57–67) and banks (pp. 68–76), which are then exploited and "milked dry" (pp. 31, 75–76).[14]

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Conference Committee was unaware of the contents of this report at the time it considered the Poff and McDade amendments, or that this report failed to enter into their deliberations relating to these proposals.

[14] The several cases recently brought under the statute here in question are illustrative (*supra* p. 24). Thus, the victim here was the proprietor of his own butcher shop; in *DeStafano*, he was the proprietor of a gas station, whose son had incurred the debt; in *Fiore*, it was an insurance broker; in *Calegro DeLutro*, the victim was a furrier; and in *Biancofiori*, he apparently was a painter and decorator. Here, the victim was threatened with the "attention of persons higher in the money-lending chain" (A. 15a); in *Fiore*, the broker was told that the money belonged to the "big boss" (434 F. 2d at 968); in *Bian-*

Moreover, there were three days of open hearings on loan sharking held by the Senate Select Committee on Small Business the week before the conference bill was adopted by both houses. The testimony given at those hearings was made immediately available to members of the House. See, *e.g.*, 114 Cong. Rec. 14390. Witnesses—some of whom were New York law enforcement officials who had testified at the earlier state commission hearings—told essentially an updated version of the same story of menace and human misery that had been set forth in the state report of 1965. See *Impact of Crime on Small Business—1968*, Hearing before the Senate Select Committee on Small Business, 90th Cong. 2d Sess., May 14, 15 and 16, 1968 (hereafter referred to as "Hearings"). Significantly, one former New York police detective testified that federal agents working on cases involving such matters as revenue violations or interstate gambling frequently developed information on loan sharking which they were reluctant to refer to local authorities lest the investigations of the federal violations be prejudiced (Hearings, p. 7); however, such information rarely permitted a federal prosecution on the extortion aspect of

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*cofiori*, it was made clear that the lender "was an agent for a criminal organization" (422 F. 2d at 584). In addition, the victim here was told by petitioner that "his people" could have purchased the butcher shop at an auction sale and hired the victim to operate it (Tr. 118–124); in *Biancofiori*, the lender actually forced himself into a business partnership with the victim (422 F. 2d at 585). Finally, in the instant case, the victim was told to steal or sell drugs if necessary to obtain money to make the payments (Tr. 126–131); in *Fiore*, the victim was forced to misappropriate a client's check in order to meet his scheduled payments (434 F. 2d at 968).

the loan shark activity because the then applicable federal statutes required proof in each instance that a facility of commerce was used (Hearings, pp. 31–32).

It was on the strength of all this evidence that various members of Congress based their conclusions that the loan shark racket provides organized crime with its second most lucrative source of revenue, exacts millions from the pockets of the poor, coerces its victims into the commission of crimes against property, and causes the takeover by racketeers of legitimate businesses. See generally, 114 Cong. Rec. 14391, 14392, 14395, 14396. The essence of these conclusions—which were summarized and embodied in formal findings (P.L. 90–321, 82 Stat. 146, 159, Sec. 201)[15]—is that loan sharking constitutes a substantial threat to the economic stability of the entire nation, a threat which only federal law enforcement authorities possess the capacity effectively to combat. This considered judgment of Congress is not, we submit, without reasonable factual basis.

2. *a.* The dissent below sought to discredit the formal findings primarily because it is "clear that not every extortionate act, no matter how small the debt involved, has any significant effect on interstate commerce" (A. 33a). However, this misconceives the basis on which Congress draws its authority "to declare that an entire class of activities affects commerce." See *Maryland* v. *Wirtz,* 392 U.S. 183, 192. The 239

[15] The original McDade amendment contained nine findings, and the original Poff amendment ten, which outlined in detail the impact of loan sharking upon the national economy. The findings set forth in the final version of the legislation shortened and summarized these more detailed earlier findings.

excess bushels of wheat harvested in *Filburn* (317 U.S. 111, 114, 127–128) similarly did not, by themselves, have "any significant effect" on the national price of wheat. And the racially discriminatory policy of the restaurant proprietor in *McClung* in and of itself neither "significantly" diminished Negro spending on interstate goods nor caused the "wide unrest" which the Court in that case found to have a depressant effect upon interstate commerce (379 U.S. 294, 300–301). But, as Mr. Justice Black stated in his joint concurring opinion in both *McClung* and *Atlanta Motel* (379 U.S. at 275), "we do not consider the effect on interstate commerce of only one isolated, individual, local event, without regard to the fact that this single local event when added to many others of a similar nature may impose a burden on interstate commerce by reducing its volume or distorting its flow." And see the Court's opinion in *McClung,* 379 U.S. at 304–305; *Wickard* v. *Filburn,* 317 U.S. 111, 127–128.

Here, among other information, Congress had before it evidence that loan sharking takes $350 million a year from the poor alone. Surely, the transfer each year of that huge sum from the pockets of the poor to the pockets of those who prey upon them constitutes a "distortion" which burdens interstate commerce at least as much as racial discrimination "distorts" commerce by reducing Negro spending. Under these circumstances, the possible "*de minimis* character of individual instances" of loan sharking is, as this Court held in *Maryland* (392 U.S. at 197 n. 27), "of no consequence."

*b.* Nor can Congress' action reasonably be attacked on the ground that, "[a]lthough the Congressional findings refer to organized crime, there is no requirement in the statute that the prosecution establish any connection between organized crime and the transaction which is condemned" (A. 33a). This merely puts in issue the second aspect of the judicial review standard enunciated in *Atlanta Motel* (see *supra*, p. 27): whether Congress has chosen reasonable means to deal with the evil effects of interstate commerce it has properly found to exist.

As we have already indicated, Congress clearly had sufficient information before it to sustain the conclusion that, directly or indirectly, almost all loan sharking activities are controlled by organized crime, and that such activities are a major weapon in the assault by the organized underworld upon legitimate commerce (*supra*, pp. 29–30). The dissent below (A. 33a), for the sake of an occasional hypothetical loan shark who might have no connection with organized crime, would have Congress require proof in each case of "the relationship of the parties or their identity"—which presumably means proof either that the borrower obtained the money to finance an unlawful enterprise or that the lender was involved at some level in an organized criminal apparatus engaged in multi-faceted unlawful enterprises. To require such extraneous and difficult proof, however, would leave the statute as toothless as the state laws and the preexisting federal extortion laws, the practical ineffectiveness of which made the present legislation necessary. Such a self-defeating requirement, we submit, is not constitutionally compelled.

The degree to which the loan shark racket is controlled by the organized underworld, and the uses to which the underworld puts both the profits and the leverage that it reaps therefrom, plainly establish the existence of a serious deleterious effect on interstate commerce which it is necessary and appropriate for Congress to eliminate. Since effective elimination of the evil can be achieved only by subjecting all extortionate credit transactions to federal proscription, the means is "reasonable and appropriate"; it is not made the less so by the hypothetical possibility that some few loan sharks who are totally unconnected to the organized underworld will be caught in the federal net. And even the activities of an "independent" loan shark have significant impact on a borrower who is a businessman dealing in interstate merchandise, as well as the interstate activities of ordinary consumers.[16] As this Court declared over thirty years ago in *United States* v. *Darby*, 312 U.S. 100, 121:

> Congress, having by the present Act adopted the policy of excluding from interstate commerce all goods produced for the commerce which do not conform to the specified labor

[16] While Congress did not include a formal finding precisely to this effect, its "absence is not fatal to the validity of the statute." *Katzenbach* v. *McClung*, 379 U.S. 294, 304. The constitutionality of the Act must be sustained if the courts can find a rational basis for the legislative prohibition "from all the considerations presented to Congress, and those of which [the courts] may take judicial notice." *United States* v. *Carolene Products Co.*, 304 U.S. 144, 154. See discussion infra, p. 38. Congress did find that "[e]ven where extortionate credit transactions are purely intrastate in character, they nevertheless directly affect interstate and foreign commerce." P.L. 90-321, sec. 201(a)(3).

> standards, it may chose the means reasonably adapted to the attainment of the permitted end, even though they involve control of intrastate activities. * * * A familiar like exercise of power is the regulation of intrastate transactions which are so commingled with or related to interstate commerce that all must be regulated if the interstate commerce is to be effectively controlled.

*c.* Petitioner, however, attacks the statutory findings from a different angle. Invoking the "rational connection" test used in *Leary* v. *United States,* 395 U.S. 6, for determining the validity of a statutory presumption (Br. 7), he urges, with regard to the first finding, that "[a]t best, Congress has indicated that some extortionate credit transactions are a source of revenue to organized crime but flowing therefrom is not the rational connection between all extortionate credit transactions as a class and organized crime" (Br. 8). The fatal flaw in both the first and third findings, in his view, is that "Congress did not inquire into extortionate credit transactions per se or to the effect of such transactions on interstate and foreign commerce. The evidence before Congress was specifically directed towards the involvement of organized crime in this type of criminality" (Br. 8, 9).[17]

But such an argument confuses the "rational connection" concept necessary to sustain a legislative

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[17] In his petition for a writ of certiorari, petitioner suggested that the statutory findings would have possessed validity only if Congress had made a "statistical analysis of the legion of state loan-sharking prosecutions" and found that "at least a majority" possessed a "federal element" (Pet. 9–11).

presumption with the "rational basis" concept necessary to sustain a congressional assertion of power under the Commerce Clause to regulate a specific class of conduct. The two phrases—embodying, as they do, tests which serve separate functions—are not synonymous. A presumption—because it serves as a link in the evidentiary chain needed to establish that the conduct of a particular defendant falls within the legislatively proscribed class—must meet due process standards of probative reliability, lest the burden of proof be arbitrarily shifted to the defendant. See *Tot* v. *United States,* 319 U.S. 463, 467–469. And this is true even though the fact to be presumed is one which the legislature need not have made an element of the offense. 319 U.S. at 472. Thus, where the statutory presumption concerns a fact which, being outside common experience, necessitates specialized knowledge, Congress might be required to hold formal hearings and rely only on evidence meeting courtroom standards to sustain a finding of "rational connection."

A statutory assertion of power to regulate a certain class of conduct, on the other hand, involves wholly different considerations. Congress, in enacting the instant statute, did not create a legislative "presumption" that all defendants shown to have engaged in loan sharking activities will be deemed to have done so in interstate commerce—*e.g.,* in the sense of using a facility of commerce in connection with a particular transaction, engaging in a transaction which alone has a significant impact on commerce, and the like.

Rather, Congress has concluded that loan sharking activities as a class substantially affect commerce and hence are susceptible of federal control. The jury's function is simply to determine whether, in fact, "extortionate means" have been employed to collect or attempt to collect any extension of credit; no presumptions need be invoked to decide that question, which is the only question in determining the individual defendant's criminality.

It thus follows that the same high order of probative reliability necessary to sustain a legislative presumption is not required here. Rather, it is sufficient if a "rational basis" for Congress' exercise of its commerce power in this area can be found on "any state of facts either known or which could reasonably be assumed." *United States* v. *Carolene Products Co.*, 304 U.S. 144, 154. Nor is there any requirement that Congress acquire knowledge of those facts through formal hearings or any particular line of evidentiary inquiry. As this Court recently stated in *Maryland* v. *Wirtz,* 392 U.S. 183, 190, n. 18, "[w]e are not concerned with the manner in which Congress reached its factual conclusions." And see *Katzenbach* v. *McClung* 379 U.S. 294, 303–304; cf. *United States* v. *Synnes,* C.A. 8, No. 20,238, decided February 1, 1971. Manifestly, the various sources of information relating to the loan shark racket that were before Congress (*supra* pp. 28–32) offered more than adequate support for the findings on which it based its exercise of power under the Commerce Clause to enact the instant legislation.

II. TITLE II OF THE CONSUMER CREDIT PROTECTION ACT CAN ALSO BE SUSTAINED AS A PROPER EXERCISE OF CONGRESS' POWER UNDER THE BANKRUPTCY CLAUSE

Congress also had authority to enact the instant legislation on the basis of its power under the Constitution to establish "uniform Laws on the subject of Bankruptcies throughout the United States" (Art. I, § 8, cl. 4).[18] This is not to suggest that the statute is a bankruptcy law; Congress did not purport to make it such. Rather, Congress found that extortionate credit transactions "directly impair the effectiveness and frustrate the purposes of the laws" which have been enacted on the subject of bankruptcy. As stated in the Conference Report (H. Conf. Rep. No. 1397, 90th Cong., 2d Sess., p. 28):

> In the exercise of [its bankruptcy] power, Congress has enacted the Bankruptcy Act, which confers upon any debtor the statutory right, with certain qualifications, to be discharged of his debts by applying substantially all of his property toward their repayment. It is obvious, however, that obligations as to which there is an understanding that they may be collected by extortionate means, or which are actually so

[18] Although the majority below did not reach the question whether the Bankruptcy Clause provides a base for federal authority over loan sharking activities, other courts of appeals presented with the issue have held that it does. See *United States* v. *Biancofiori*, *supra*, 422 F. 2d at 586; *United States* v. *Fiore*, *supra*, 434 F. 2d at 970; see also *United States* v. *Calegro DeLutro*, 309 F. Supp. 462, 466 (S.D.N.Y.), affirmed, C.A. 2, No. 34987, decided December 11, 1970, petition for certiorari pending, No. 1234, this Term; *United States* v. *Curcio*, 310 F. Supp. 351, 356 (D. Conn.).

> collected, are not susceptible of being "discharged" in bankruptcy in any meaningful sense. Such transactions thus deprive the debtor of a Federal statutory right, and at the same time defeat one of the principal purposes of the Bankruptcy Act, which is to afford insolvent persons the opportunity to make a fresh start. Thus, it seems clearly within the power of Congress to protect the Federal statutory right, and to assure that the bankruptcy laws will be carried into execution, by enacting legislation to prohibit extortionate credit transactions. * * *

This reasoning, we submit is both logically and factually sound. As noted earlier (*supra*, pp. 29–30), much of the information before Congress concerning the operation of the loan shark racket detailed the methods by which the organized underworld used the leverage of its extortionate loans to take over the businesses of its victims. Those indebted to the underworld are, in a very tragic sense, deprived of any opportunity to make a fresh start. They cannot, as the facts of the instant case most graphically demonstrate, discharge their loan-shark debts simply by full repayment. Nor are they ever given an opportunity to satisfy other indebtedness by an equitable proration among creditors of available assets. In short, their plight is precisely as described on the floor of the House by Representative Poff in discussing the effect extortionate credit transactions have on the bankruptcy laws (114 Cong. Rec. 14391):

> The purpose of the bankruptcy clause is primarily humanitarian; namely, to give an insolvent debtor a fresh start by dividing his

> assets, remaining after essential family exemptions, among his creditors and discharging his liabilities to them. If a particular loan involves extortion and violates other criminal laws, it is not susceptible of being discharged. Indeed, its very existence probably will never come to light in the bankruptcy proceedings because the victim is in fear of his very life or the bodily safety of himself and his family. It is anomalous that all of the lawful obligations of the debtor can be discharged at the expense of honest creditors while an unlawful obligation survives the bankruptcy proceedings and remains alive for the benefit of the dishonest creditor. In summary, the loan-shark operation frustrates and defeats the function and purpose of the bankruptcy law with respect to which the Constitution gives the Congress exclusive jurisdiction.

It would appear self-evident that adherence on the part of creditors to the prescribed procedures under law for collection of their debts is an indispensable prerequisite to the effective functioning of any legal scheme aimed at the ordering of the affairs of insolvent persons. When there are creditors who refuse to follow these legal precepts, the meaningful implementation of the bankruptcy laws by all entitled to enjoy their benefits requires that the force of criminal sanctions be brought to bear against such creditors. On this basis, the instant legislation is "necessary and proper for carrying into Execution" (see Art. I, § 8, cl. 18) the bankruptcy power with which Congress is invested, and is "plainly adapted" to that end. Cf. *McCulloch* v. *Maryland*, 4 *Wheat.* 316, 409–420.

The dissent below objects that such reasoning "would lead logically to the conclusion that, under the Bankruptcy Clause Congress could exercise complete control over all economic activity since almost any such activity might have some effect on a bankrupt's debts" (A. 32). This argument, however, misses the essential point. Congress has not exercised its bankruptcy power in this area because loan sharking has "some" effect on a "bankrupt's" debts. It has, instead, determined to reach this class of conduct because the loan shark racket has the total effect of forcing its victims into insolvency while, at the same time, depriving them of all access to the lawful relief afforded by the bankruptcy laws.

## CONCLUSION

For the reasons stated, it is therefore respectfully submitted that the judgment appealed from should be affirmed.

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